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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

B5

[redacted]

DATE: JAN 2 3 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a freelance management analyst/consultant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner failed to show that she qualifies for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and a supporting exhibit.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue under consideration is whether the petitioner qualifies for the classification sought.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(2) includes the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If

> a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The USCIS regulation at 8 C.F.R. § 204.5(k)(4) states, in part:

> (i) General. Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor. . . . The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.
>
> (ii) Exemption from job offer. The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business if exemption would be in the national interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

The petitioner filed the Form I-140 petition on September 28, 2009. The petitioner's initial submission included documentation of her bachelor's and master's degrees from De La Salle University, Manila, Philippines, along with a credential evaluation indicating that the petitioner's "studies are equivalent in level and purpose to a Bachelor of Science Degree in Computer Science and a Master of Business Administration Degree awarded by regionally accredited colleges and universities in the United States."

The director denied the petition on August 25, 2010, stating:

> USCIS recognizes the petitioner obtained the foreign equivalent to a United States advanced degree from De La Salle University, Manila. However, the petitioner has not established that an advanced degree is required to perform services as a freelance management consultant. It is not enough to simply establish that an alien holds an advanced degree; the petitioner must also demonstrate that the proposed employment itself requires a professional holding an advanced degree or an alien of exceptional ability. In the present case, the petitioner has not established that this burden has been met.

The director then quoted an excerpt from the regulation at 8 C.F.R. § 204.5(k)(4)(i) to support the above finding.

On appeal, the petitioner submits a photocopy of the "Management Analysts" entry from the 2010-2011 edition of the *Occupational Outlook Handbook*, which states: "Many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. . . . Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years."

The AAO finds the director's reliance on the regulation at 8 C.F.R. § 204.5(k)(4)(i) to be flawed. That clause of the regulation presumes a job offer and labor certification (or a specified alternative). In this instance, the petitioner seeks an exemption from the job offer requirement. Therefore, there is no approved labor certification, and thus no job offer portion of the labor certification.

In the absence of a specific job offer, it is not possible to demonstrate that the job offer requires an advanced degree or exceptional ability. In such circumstances, the regulation at 8 C.F.R. § 204.5(k)(4)(i) cannot, and therefore does not, apply. The petitioner is, however, still subject to the regulatory definition of a "profession" because the plain language of the statute refers to "members of the professions holding advanced degrees," rather than merely "aliens holding advanced degrees."

The petitioner's evidence is consistent with a finding that her occupation is a profession (requiring at least a bachelor's degree for entry into the occupation). The director did not contest that the petitioner holds an advanced degree. Therefore, the record establishes that the petitioner is a member of the professions holding an advanced degree. The AAO will withdraw the director's finding to the contrary.

The second and final issue in this proceeding is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

As quoted previously, the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii) states: "To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The Form ETA-750B is now obsolete; parts J, K and L of the successor Form ETA-9089 fulfill the same function. The petitioner did not submit any of these required forms, and therefore did not properly apply for the waiver. Nevertheless, the director did not base the denial of the petition on this omission. The AAO will consider the merits of the petitioner's claim, rather than leave it at a finding that the petitioner did not properly apply for the national interest waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In a statement accompanying the initial filing, the petitioner explained why she sought the waiver:

> As the country struggles to recover from this deep economic recession . . . , many displaced workers find themselves unprepared for what could be the best option for them right now – starting their own business. . . .
>
> With hopes dimmed by the prospects of a weak economy, first-time entrepreneurs are not confident enough to start their own business especially without any formal background and training in business management. My role as a small business coach helps fill in the gap to jumpstart the process reducing the time it takes to obtain business knowledge and skills necessary to start and manage a business. I have been writing articles which promote entrepreneurship, sound management principles and business ethics. . . . Compared to my peers who may have the same educational

> background, I have the ability to articulate and impart my knowledge with fluency and effectiveness which is vital to my role as business coach and mentor.
>
> Although I have made significant contributions to companies I have been employed with and will continue to [do] so with every opportunity, being a freelance management consultant has allowed me to explore limitless possibilities in developing my skills in order [to] reach a broader market sector. Therefore, continuing my practice here will not deprive US workers of any work opportunity but will, in fact, help them create more opportunities for themselves and for other individuals and businesses as I actively promote entrepreneurship. My exceptional ability, business skills, knowledge and experience are not only necessary but very critical to serving the national interest of the United States in building its economy in the shortest possible time.

There exists no blanket waiver for management analysts/consultants. Simply working in that field is not sufficient to qualify the petitioner for the national interest waiver. The statement quoted above indicates that the petitioner believes her skills to be superior to those of many others in her field. The petitioner's own claims, however, cannot establish eligibility for the waiver. *NYSDOT* requires "a past history of demonstrable achievement with some degree of influence on the field as a whole. . . . In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest." *Id.* at 219 n.6.

The petitioner submitted several witness letters. [redacted] stated:

> I have known [the petitioner's] work through a major publication widely circulated within the community. Her articles deal with issues which are relevant to our organization's mission. She is one of few Filipino business writers who can discuss both academic and practical views on entrepreneurship and business management.
>
> [The petitioner's] special feature article describing the financial crisis in layman's language has helped many, who [had] been looking for a simple explanation of the intricacies of the economic downturn leading to the global recession. Her skillful presentation of her understanding of economics and business management further authenticates her outstanding abilities.

[redacted] did not identify the "major publication," "the community" that the petitioner serves, or any example of a business that owes its success to the petitioner's help. Other materials in the record (including the next letter, discussed below) indicate that the "major publication" is the *FilAm Star*, "the newspaper for Filipinos in mainstream America," headquartered in San Francisco, California, and that "the community" is the Filipino-American community.

[redacted], editor-in-chief of the *FilAm Star*, stated:

> [The petitioner's] articles published by our newspaper, FilAm Star, have greatly helped our readers gain a more structured yet practical view of business management. Many of those who have been following her regular column, [redacted], have expressed their appreciation for the author's valuable insights and practical suggestions as she responds to their inquiries about their own business problems.
>
> The addition of her column to our roster . . . has significantly broadened our readership. . . . Our editorial staff has also benefited from her strategic perspective when discussing changes in business plans and directions.
>
> Overall, [the petitioner's] work has been used by many entrepreneurs in the field who have been in business for quite a while and also by those who are just contemplating starting on their own. Most of her colleagues have expressed admiration for her work which significantly focuses on basic management principles, professional skills and attitude at the workplace.

It is not self-evident that a newspaper editor would have first-hand knowledge that the petitioner's "work has been used by many entrepreneurs"; the editor did not cite any evidence to support that conclusion. The petitioner submitted no statistical evidence to show that [redacted] have had more entrepreneurial success than other current or aspiring business owners.

[redacted] stated:

> I personally know [the petitioner] who has proven herself with [the] distinctive advantage of having extensive knowledge and background in both fields of information technology and business management.
>
> In fact, [the petitioner] remarkably influenced several university professors of the De La Salle University to pursue her same passion for promoting the widespread use of information technology in business management by establishing [redacted] a management consulting firm aimed at providing management trainings [*sic*] and seminars that are geared towards improving the understanding and skills of managers in the use of technology as planning and decision making tools.
>
> The [redacted] conducted IT and management consulting projects with major companies in different industries such as banking, insurance, telecommunications, schools and government agencies. In fact, I was once a client of [the petitioner] in 1996 when I was the [redacted]

[redacted] did not explain how he had personal knowledge of the petitioner's influence on "several university professors of the De La Salle University." While [redacted] identified himself as one of

the petitioner's former clients, he did not claim to be an entrepreneur who started his own business. Rather, he was an executive at a bank that he did not claim to have founded.

The next two initial witnesses provided the most detail about the petitioner's efforts with specific employers. [redacted] IV, senior manager of the account management office at Meralco, Pasig City, Philippines, stated:

> [The petitioner's] effort in promoting the use of information technology for competitive advantage in business and operations has benefited our company's workforce through the significant changes she introduced in the administration of the [redacted] and also through her brainchild, the [redacted] the 40-page company magazine publication on business management and information technology which evolved from being a 4-page Info Center newsletter. As [redacted] she has published editorials and articles which greatly influenced the reengineering management team for the [redacted].
>
> Her most significant contribution was the introduction of the strategic component in the corporate planning process of the company. Before the adoption of her Strategic Planning Framework, the annual corporate planning process focused mainly on operational performance measures as corporate indicators. With the revised corporate planning process, [redacted] top management was able to adopt a broader perspective in facing mounting challenges posed by political and economic changes in the business environment.
>
> [The petitioner] is highly recommended for her expertise in Information Technology and business. She is a team player and would make a great asset to any organization.

Another of the petitioner's former employers, [redacted], purchasing department head at [redacted] stated:

> As [redacted] (1997-1997), [the petitioner] has demonstrated her professional skills in both fields of strategic management and information technology through her team's contribution to improving the company's systems and procedures in several functional areas such as finance and accounting, human resources, manufacturing plant operations, and marketing.
>
> [The petitioner] proposed and implemented a management development program which provided formal training to all management levels of affiliates, business partners and suppliers within the group. This program has also helped establish a formal organization structure and reporting system which has effectively delegated operational decision making to functional managers.

> Her most significant contribution was the introduction of a formal corporate planning process she has formulated and submitted as her graduate studies thesis paper. With the adoption of this planning framework, decision making has been decentralized which greatly reduced the time it takes to implement critical problem solutions.

While some of the above witnesses attested to the petitioner's contributions while she was a full-time employee of a specific business, none of them indicated that the petitioner had earned a track record as an especially successful advisor to budding entrepreneurs. Because the petitioner herself based her waiver claim on her intended work with such entrepreneurs, the omission is significant.

The petitioner submits copies of several articles she wrote for the [redacted] The petitioner also submitted two copies of the single-sheet newsletter [redacted] containing business advice with no author identified. Even presuming the petitioner to be the author of the unattributed articles, the submission establishes only the existence of the articles, not their influence. The latter publication is clearly local, aimed at [redacted] The record contains no circulation data for the [redacted].

On December 8, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence to establish the national scope and influence of her work. Although the RFE concerned the petitioner's Form I-140 petition, the RFE listed the receipt number of the Form I-485 adjustment application that the petitioner had concurrently filed with the petition. On January 6, 2010, the director issued a second RFE, this time referring to the petition rather than the adjustment application. Because the response period for these two RFEs overlapped, and the petitioner submitted many of the same exhibits in response to both notices, the AAO will consider them here collectively. The AAO notes that, in the second RFE, the director repeatedly referred, erroneously, to the petitioner's research work. Such references do not apply because the petitioner is not a researcher. This error, however, does not invalidate the RFE as a whole.

In a response letter dated January 15, 2010, the petitioner stated:

> My vocation as a freelance management consultant allows me to explore numerous opportunities to delve into current areas of interest which can be limited by being employed by another entity. Being self-employed gives me the freedom to choose any field of expertise I want to focus on and work with any type of business entity or take on any project that can help further my career and personal development while fulfilling my sense of mission.
>
> I chose to focus my efforts and devote my skills to helping small businesses because I firmly believe that they drive the U.S. economy. Often referred to as the 'backbone of the U.S. economy,' small businesses represent 99.7 percent of all firms, create more than half of the private non-farm gross domestic product and also create 60 to 80 percent of the net new jobs, according to the Small Business Administration Office of Advocacy.

> For my part, if I can help individuals who desire to become one of these productive job-creating entrepreneurs, I can make a significant impact in my community and this nation's economy. . . .
>
> Ideally, in response to your Request for Evidence (RFE) notice, I should present record of past achievements but this is not realistic or practical for me at this point, given the time limit and travel constraints, as these documents can only be obtained from my previous employers in the Philippines – going ten or even twenty years back.

Regarding the petitioner's activities "ten or even twenty years" ago, the AAO notes that the petitioner was not a freelance management consultant in the Philippines in the 1990s. Rather, she worked for a succession of employers, such as those documented in her initial submission. The petitioner continued:

> My vocation as a freelance management consultant has a prospective benefit that will be national in scope because as each small business gets established and remains profitable, their suppliers from different parts of the country can also remain in business and retain or even create more jobs. . . . I have reproduced copies of actual receipts to illustrate and emphasize the national impact of each small business.
>
> Small businesses, though locally situated, purchase equipment and supplies . . . from different states all over the country. . . . Moreover, each small business, as it continues to grow and expand, has the potential either to go into franchising or to spawn other types of businesses.

As an illustration of the claimed national scope of her work, the petitioner submitted copies of invoices relating to "a small bakery café that [she] assisted in setting up." The documents show that the café bought supplies from companies in New York, Illinois, Alabama, Florida and Nevada. The petitioner portrayed the [redacted], as an example of her consulting work, but the receipts show that the petitioner herself purchased the items. Prior to making those purchases, certificates in the record show that the petitioner took three courses on [redacted] The available evidence indicates that the petitioner did not simply "assist[] in setting up" the company. She appears, instead, to have been an active participant in that company. The petitioner set up [redacted] in 2006, but she did not submit any evidence to show what subsequently happened to the business. The petitioner did not demonstrate that [redacted] was particularly successful, or even still existed in 2010. The petitioner's waiver claim rests entirely on her claimed expertise in business consulting, and therefore the lack of information about that business – her own chosen example of her activities – is a major omission.

The petitioner also submitted sample materials relating to a seminar, [redacted] that she offered in August 2009. The materials indicate that the seminar took place, but do not establish its impact or distinguish the petitioner from others who offer similar services.

Further witness letters accompanied the petitioner's responses to the two RFEs. The petitioner submitted a second letter from the [redacted] The name on this letter is [redacted], which is apparently a variation on the name [redacted] from the earlier letter; the signatures on the two letters appear to belong to the same person. [redacted] stated that the petitioner "has freely shared with readers of [redacted] . . her vast and well-researched knowledge of business management and entrepreneurship," while receiving "no compensation."

[redacted] a skin care clinic in San Leandro, stated: "[the petitioner] introduced me to a small publication called [redacted] . . . Last year, as a favor, [the petitioner] translated one of our documents into Tagalog because we have many Filipino clients."

The petitioner submitted several letters and electronic mail messages from individuals in or near San Leandro who had not yet used the petitioner's consulting services, but who planned to do so in the near future because of various economic circumstances. These letters do not establish the national scope of the petitioner's occupation or her track record as a management consultant/analyst. Because the petitioner had not yet performed any work for these prospective clients, they were not in a position to evaluate the petitioner's work.

Only one witness claimed to have already received consulting services from the petitioner. [redacted] stated that the petitioner "has volunteered her services as management systems consultant," which "has greatly helped [the business] eliminate unnecessary processes and minimize potential wastes." The petitioner submitted no documentary evidence to provide specific support for these vague assertions. It would appear that increasing efficiency and reducing waste are basic functions of a management consultant, rather than hallmarks of distinction that would single the petitioner out for the national interest waiver. [redacted] letter simply does not contain enough information to justify the finding that the petitioner qualifies for a special exemption from the job offer requirement that normally applies to the classification that she has chosen to seek.

In the August 25, 2010 denial notice, the director found that the intrinsic merit of the petitioner's occupation "is immediately apparent." Regarding national scope, however, the director concluded that "the impact of the regionalized clientele would be so attenuated at the national level as to be negligible." The director also found that the petitioner had failed to show that her past consulting activities have had any significant effect on businesses in the United States.

On appeal, the petitioner, referring to herself in the third person, stated:

> It should be noted that in the nine years prior to the filing of the Form I-140 Immigrant Petition, the petitioner's employment opportunities had been adversely

> affected and severely limited by her immigration status. Without work authorization, Social Security Number and Driver license, the petitioner's mobility had been greatly restricted to a particular geographic area, thus, the regionalized clientele and the attenuate impact and contribution to the industry or field.
>
> However, despite this extremely difficult situation, the petitioner was able to perform consulting efforts such as helping some investors establish a small bakery café and other small businesses with their business plans, feasibility studies, and management systems which cannot be considered a usual and ordinary accomplishment by every **average** U.S. worker with the same knowledge and capabilities even with the advantage of a legal status or citizenship. . . .
>
> The reference letters from prospective and existing clients were speculative in nature and were attempts to forecast anticipated accomplishments because of the uncertainty of the petitioner's/consultant's future immigration status pending approval of the Form I-140 petition. These clients were not willing to risk their potential business future hiring a management consultant who may not be able to see them through the completion of their business startup or expansion project.

The petitioner has acknowledged that she has been in the United States with no lawful status since her status as a B-2 nonimmigrant visitor expired on December 26, 2000.[1] While it is clearly true that a lack of lawful status has restricted the petitioner's options in the United States, these limitations do not entitle the petitioner to favorable consideration. Applicants for the national interest waiver must meet the various thresholds set forth in *NYSDOT*, including national scope and a history of influential achievement in the field. USCIS cannot and will not waive these fundamental requirements simply because the petitioner claims that her lack of lawful status left her unable to work as she would have liked. It is pointless to speculate about what might have happened if the petitioner had been able to work in the United States, or had returned to the Philippines and worked as a management consultant there. The petitioner cannot sidestep the requirement of a track record of impact and influence merely by claiming that she would have earned such a track record by now under different circumstances, or that she intends to earn one as soon as she is able to work freely in the United States.

In terms of her existing track record, the petitioner has claimed that she

> was able to perform consulting efforts such as helping some investors establish a small bakery café and other small businesses with their business plans, feasibility studies, and management systems which cannot be considered a usual and ordinary accomplishment by every **average** U.S. worker with the same knowledge and capabilities.

[1] The petitioner also acknowledged that her father filed a Form I-130 immediate relative petition on her behalf on April 18, 2001, which the California Service Center approved on August 1, 2001. Due to backlogs in visa number allocation, the petitioner has not yet been eligible to adjust status based on the approval of that petition.

The petitioner submits no objective evidence at all to show that her past work "cannot be considered a usual and ordinary accomplishment" within her field. The petitioner provides no baseline for what management consultants ordinarily achieve, and no evidence that her achievements have exceeded that benchmark. She provides no details about her own work at all except to mention, once again, the "small bakery café." She does not show that this business was successful in any way, or even that it still exists at all, and yet she maintains that her work with the café "cannot be considered a usual and ordinary accomplishment" within her field. Hyperbole without substance cannot form the basis for a successful appeal. The petitioner, on appeal, has offered no argument or evidence to show that the director's decision was in error.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.